



UNIVERSITY OF  
**TORONTO**  
FACULTY OF LAW



# **LAW, DIVERSITY AND CULTURE IN A TRANSNATIONAL WORLD**

## **INTENSIVE COURSE**

**Distinguished Visiting Professor Anne Griffiths**

**Winter 2008**

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LAW, DIVERSITY AND CULTURE IN A TRANSNATIONAL WORLD (LAW711H1S)

Winter 2008

Professor Anne Griffiths


ESSAY TOPICS

1. "From an actor's perspective law is a resource to be used in a variety of different contexts to achieve certain ends." Discuss.
2. "The study of legal pluralism seeks to give voice to those who are excluded from mainstream or formalist legal discourse." Discuss.
3. "The mobility of people and law in a transnational world challenges the notion of a single site of legal sovereignty embodied in the state in favour of a more multi-faceted concept of law that acknowledges that "state law is not the only source of power" (Benda-Beckmann and Griffiths 2005:14)." Discuss.
4. "The study of law should be more than a study of what courts and judges do." Discuss.
5. "Whatever is special about anthropologists' or social scientists' perspectives on law arises from their tendency to see the legal system as part of a wider social milieu [paraphrased from S.F. Moore 1978:215]" Discuss.

Quotes taken from:-

Sally Falk Moore, *Law as Process: An Anthropological Approach* 1978.

F and K von Benda-Beckmann and A. Griffiths (eds) *Mobile People, Mobile Law: Expanding Legal Relations in a Contracting World* 2005.



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## COURSE DESCRIPTION

### **LAW, DIVERSITY AND CULTURE IN A TRANSNATIONAL WORLD**

Professor Anne Griffiths

**Max Enrol: 25**

#### **Schedule: Weeks of January 28 and February 4, 2008**

29 T: 8:20 – 10:20 a.m.

31 Th: 8:20 – 10:20 a.m.

31 Th: 6:10 – 8:10 p.m.

01 F: 2:10 – 4:10 p.m.

04 M: 8:20 – 10:20 a.m.

07 Th: 8:20 – 10:20 a.m.

08 F: 9:00 – 11:00 a.m.

In recent years attention has focused on globalisation as a phenomenon and local communities' responses to it. This has included a growing recognition of the importance of transnational forms of law and ordering. In an age where law and legal institutions now cross local, regional and national boundaries and in which the 'local' is embedded in and shaped by regional, national, and international networks of power and information it is necessary to re-examine the relationship between law, culture and rights. The course will explore this relationship from social scientific and anthropological perspectives by addressing:

1. the operation and effects of legal pluralism at multiple levels;
2. the ways in which states regulate and respond to pluralism and how communities and social actors respond;
3. the role of international human rights as perceived and utilised by various constituencies including indigenous people, minorities, NGO's and individuals.

**Evaluation:** will be required to write a 10-12 page research paper, which will be graded on an Honours/Pass/Fail basis. Papers must be delivered to the Records Office by 4:00 p.m. on Monday **February 25, 2008**. Graduate students are graded on the graduate grading scale.

## COURSE OVERVIEW

Session 1	Plural Perspectives on Law
Session 2	Research and Data: An Ethnographic Perspective
Session 3	Reviewing Human Rights
Session 4	Property Relations: Persons and Things
Session 5	Indigenous People and Property Rights
Session 6	Defining Citizenship: The Inclusionary/Exclusionary Power of Law
Session 7	Engaging with the Transnational: The Role of Law

## SESSION 1                      Plural Perspectives on Law

This session will consider how legal narratives are constructed and how these may differ from other forms of narrative. How are lawyers trained to think and how does their disciplinary perspective compare with other disciplines within the social sciences? What does an anthropological perspective bring to the study of law and what does it mean to talk about the plurality of law given the current experiences of globalization and transnational domains that extend beyond the nation-state? How does law work in under the current conditions of globalization and what are its effects in the local, regional, national and international contexts in which law becomes available and is rejected or appropriated?

- Moore, S.F. 2001. 'Certainties Undone: Fifty Turbulent Years of Legal Anthropology 1949-1999' *JRAI* 7(1):95-116.....1
- R. F. Kandel, 1992."How Lawyers and Anthropologists Think Differently" pp 1-5 in *Double Vision: Anthropologists at Law*, R.F. Kandel (ed). *Napa Bulletin* 11 .....22
- Griffiths, A. 2002. Legal Pluralism pp 289-310. in *An Introduction to Law and Social Theory*, R. Banakar and M. Travers (eds.). .....28

### Further Reading:

- Von Benda-Beckmann, F and K and A. Griffiths. 2005. Mobile People, Mobile Law: An Introduction pp 1-26 in *Mobile People, Mobile Law: Expanding Legal Relations in a Contracting World*, F. and K. von Benda-Beckmann and A. Griffiths (eds).
- Merry, S. E. 1988. 'Legal Pluralism' *Law and Society Review* 22: 869-896 .....*find beyond divider*
- Von Benda-Beckmann, F. 1988. 'Comment on Merry' *Law and Society Review* 22:897-901  
.....*find beyond divider*

## SESSION 2                      Research and Data: An Ethnographic Perspective

This session will explore what is meant by an ethnographic perspective and what is special about its approach to the study of law. It will examine the benefits of using ethnography as a tool of legal research, as well as addressing past critiques of this methodological approach, while exploring how the use of grounded ethnographic detail may deal with the challenges to the anthropological imagination that are posed by modern uncertainties through engaging with agency and ethnographic reflexivity, identity and ethics, and the inseparability of political economy and interpretivism.

- Griffiths, A. 2002. "Doing Ethnography: Living Law, Life Histories and Narratives from Botswana" pp. 160-181 in *Practicing Ethnography in Law: New Dialogues, Evolving Methods* J. Starr and M. Goodale (eds). .....50
- Zabusy, S.E. 2002. "Ethnography in/of Transnational Processes: Following Gyres in the Worlds of Big Science and European Integration" pp 113-145 in *Ethnography in Unstable Places: Everyday Lives in Contexts of Dramatic and Political Change* C.J. Greenhouse, E. Mertz and K.B. Warren (eds). .....61

### Further Reading:

- Nader, L. and B. Yngvesson 1973 'On studying the Ethnography of Law and its Consequences' in *Handbook of Social and Cultural Anthropology* J. Honigman (ed).



Gupta, A. and J. Ferguson 1997. "Discipline and Practice: "The Field" as Site, Method and Location in Anthropology" pp 1-46 in *Anthropological Locations: Boundaries and Grounds of a Field Science* A. Gupta and J. Ferguson (eds). ..... Find beyond divider

### **SESSION 3                      Reviewing Human Rights**

In this session we will review debates centering on human rights, particularly those that move beyond polarisation of the field in terms of universalism or cultural relativism. We will also explore the ways in which the global nature of human rights discourse - as manifested through international conventions and instruments, an ever proliferating range of supra-national institutions dealing with "rights", and through the local mobilization of rights by individuals, associations and "indigenous" groups - has challenged scholars to readdress the relationship between culture, rights and law.

An-Na'im, A. 2001 "The Legal Protection of Human Rights in Africa: How to do More with Less" pp. 89-116 in *Human Rights: Concepts, Contexts, Contingencies* A. Sarat and T.R. Kearns (eds).....78

Engle, K. 2001. 'From Skepticism to Embrace: Human Rights and the American Anthropological Association from 1947-1000', *Human Rights Quarterly* 23(3): 536-559 .....93

#### Further Reading:

Riles, A. 2001 Chapter 1 pp in *The Network Inside Out*.

Cowan J, MB Dembour and R. Wilson. 2001 Introduction pp 1-26 in *Culture and Rights: Anthropological Perspectives*, J.K. Cowan, MB Dembour and RA Wilson (eds).

### **SESSION 4                      Property Relations: Persons and Things**

This session examines the role of legal practices in producing the relationship between persons and things. In particular, it explores the effect of legal interventions in producing objects that can be 'owned' and the consequences that this has for social, political and economic relationships.

Benda-Beckmann, F and K and M. Wiber. 2006 The Properties of Property pp 1-39 in *Changing Properties of Property*, F. and K von Benda-Beckmann and M. Wiber (eds). .....117

Li, T. 1998. 'Working Separately but Eating Together: Personhood, Property, and Power in Conjugal Relations', *American Ethnologist* 25(4):675-94.....137

#### **Further Reading:**

Ronsbo, H. 1997. 'State Formation and Property: reflections on the Political Technologies of Space in Central America', *Journal of Historical Sociology* 10(1):56-73

Strathern, M. 1999. Divisions of Interest and Languages of Ownership pp 136-158 in *Property, Substance and Effect: Anthropological Essays on Persons and Things*

## SESSION 5

### Indigenous People and Property Rights

In this session we will explore the issue of property rights from the perspective of indigenous peoples. What options/strategies exist for dealing with the recognition of customary law in a transnational world and to what extent should they seek to bring themselves within the traditional taxonomy of intellectual property rights?

Ghosh, S. 2007 'Globalization, Patents and Traditional Knowledge', 17 *Colum.J. L.* 73 (Columbia Journal of Asian Law). .....160

#### **Further reading:**

Riley, A. 2000 'Recovering Collectivity: Group Rights to Intellectual Property in Indigenous Communities', 18 *Cardozo Arts & Ent. L.J.* 175 (Cardozo Arts and Entertainment Law Journal).

Harding, S. 2003. 'Defining Traditional Knowledge: Lessons from Cultural Property', 11 *Cardozo J' Int'l & Comp.L.* 511 (Cardozo Journal of International and Comparative Law).

Anaya, S.J and R. A Williams. 2001 'The Protection of Indigeneous People's Rights over Lands and Natural Resources under the Inter-American Human Rights System' 14 *Harv.Hum.Rts. J.* 33 (Harvard Human Rights Journal).

## SESSION 6

### Defining Citizenship: The Inclusionary/Exclusionary Power of Law

In this session we will explore social and legal definitions of what constitutes a citizen or migrant and the implications that this has for those individuals who are included or excluded from their remit. How do legal definitions differ from social perceptions and how is "illegality" constructed and to what effect? We will also address the question of transborder citizenship and the issues that it raises for the study of legal pluralism.

Glick Schiller, N. 2005 "Transborder Citizenship: an Outcome of Legal Pluralism within Transnational Social Fields" PP 27-49 in *Mobile People, Mobile Law; Expanding Legal Relations in a Contracting World* F and K von Benda-Beckmann and A. Griffiths (eds). .....208

Coutin, S.B. 2000 "Illegality and the Spaces of Nonexistence pp" 27-47 in *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency*.....220

#### **Further reading:**

De Genova, N.P. 2002 'Migrant "Illegality" and Deportability in Everyday Life', *Annu. Rev. Anthropol.* 31:419-47

Foblets, M.C. 2005 "Mobility *versus* Law, Mobility *in* the Law? Judges in Europe are Confronted with the Thorny Question 'Which Law Applies to Litigants of Migrant Origin?' pp 297-315 in *Mobile People, Mobile Law; Expanding Legal Relations in a Contracting World* F and K von Benda-Beckmann and A. Griffiths (eds).

## SESSION 7

### Engaging with the Transnational: The Role of Law

In this session we will address the role that law plays in transnational domains and the implications that this has for the study of legal pluralism. We will explore what is meant by transnational law, who has the power to make it operational, and the issues that it raises with regard to governance and accountability.

Dezalay, Y and G. Garth. 1995 'Merchants of law as moral entrepreneurs: constructing international justice from the competition for transnational business disputes', *Law & Society Review* 29(1):27-67 ...231

#### **Further Reading:**

McBarnet, D. 2002 "Transnational Transactions: Legal Work, Cross Border Commerce and Global Regulation" pp 98-113 in *Transnational legal Processes: Globalization and Power Disparities* M. Likosky (ed).

Gessner, V and A.C. Budak. 1998 "Introduction" pp in *Emerging Legal Certainty: Empirical Studies on the Globalization of Law* V. Gessner and A.C. Budak (eds).

Benda-Beckmann, F and B, forthcoming 'Transnationalization of Law, Globalization and Legal Pluralism: A Legal Anthropological Perspective' in *Globalization and Law in Asia* C. Antons and V. Gessner (eds).

